

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. LOTEL, INC., d/b/a COORDINATED BILLING SERVICES, Respondent.	DOCKET NO. FCU-04-37
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND
SETTING DEADLINE FOR RESPONSE**

(Issued September 10, 2004)

On August 5, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution in C-04-136, involving LoTel, Inc., d/b/a Coordinated Billing Services (Coordinated Billing), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings, it appears the events to date can be summarized as follows:

On May 17, 2004, Denise O'Brien of Atlantic, Iowa, submitted a complaint to the Board alleging that her long distance carrier was changed without authorization.

Ms. O'Brien also stated that the long distance carrier for her employer, the Women, Food and Agriculture Network (WFAN), also was changed without authorization. In the complaint, Ms. O'Brien stated that in April 2004 she was contacted by a telemarketer who told her that he was coordinating her monthly phone bill. Ms. O'Brien stated that the telemarketer assured her that he was not changing the carrier. Ms. O'Brien claims that in the conversation with the third-party verifier, she said no in response to questions about the phone cost and details and was then transferred back to the telemarketer. She claims that the conversation went back and forth in this manner until she finally said yes to the verifier's questions.

Board staff identified the matter as C-04-136 and, pursuant to Board rules, on May 20, 2004, forwarded the complaint to Coordinated Billing for response within ten days. Coordinated Billing responded to the complaint with a letter dated May 28, 2004. Coordinated Billing indicates that it offers customers flat-rate long distance service and sells its services using independent telemarketers. Coordinated Billing states that it is no longer accepting sales from the marketing agency responsible for the sale to Ms. O'Brien.

Coordinated Billing states that its records indicate that on April 14, 2004, one of its sales agents contacted WFAN's office and spoke to Ms. O'Brien about changing telephone service to Coordinated Billing. Coordinated Billing states that Ms. O'Brien indicated she wanted to switch to Coordinated Billing, confirmed that she was authorized to make the change, and gave her date of birth for verification purposes. Coordinated Billing states that the verification agent confirmed that Ms. O'Brien

understood that the call she had received was from a representative of Coordinated Billing, that the agent informed Ms. O'Brien of all rates and charges, and explained that the new service provided by Coordinated Billing would start in five to ten days. Coordinated Billing states that its practice is to send the customer a welcome package including a notice of all terms and conditions on the first business day following verification. Coordinated Billing provided a copy of the recording of the verification and indicated that it has issued credits to WFAN in the amounts of \$26.30 plus tax, \$2.76, and \$21.70. Board staff forwarded the verification recording to Ms. O'Brien.

Ms. O'Brien listened to the recording and informed Board staff that while it is her voice on the recording agreeing to the services of Coordinated Billing, the recording does not adequately reflect what occurred. Ms. O'Brien stated that the recording fails to relay her refusal to verify the change the first two times she was asked and the telemarketer's statements that the carrier would not change.

On July 22, 2004, Board staff issued a proposed resolution describing these events. Board staff notes that on the recording Ms. O'Brien indicated that she did want to make a change in her long distance service and gave her date of birth to confirm she wanted to make this change. Staff notes that Coordinated Billing indicated it is no longer using the services of the marketing agency that made this sale because of issues as to whether the agency was following Coordinated Billing's standards intended to prevent misrepresentation. Staff concluded that while a misrepresentation may have been made prior to the sale, there was no slam because

there was no indication on the recording that Ms. O'Brien did not want the change to occur.

In its August 5, 2004, petition, Consumer Advocate asserts that Board staff's proposed resolution is incorrect because neither the recording of the verification portion of the telemarketing call nor anything else in the record discredits the complaining customer's allegation of misrepresentation by the telemarketer during the unrecorded portion of the call. Consumer Advocate states that a civil penalty should be imposed against Coordinated Billing to deter future slamming violations and that Coordinated Billing has a history of prior violation. Consumer Advocate requests that the Board docket this complaint for formal proceeding. Coordinated Billing has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. The Board will delay establishing a procedural schedule until October 8, 2004, and allow Coordinated Billing an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on August 5, 2004, is granted. File C-04-136 is docketed for formal proceedings, identified as Docket No. FCU-04-37.

2. LoTel, Inc., d/b/a Coordinated Billing Services, is directed to file a response to Consumer Advocate's petition on or before October 8, 2004.

UTILITIES BOARD

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 10th day of September, 2004.